

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSEPH A. IOPPOLO; DAVID MCCRAY and )  
SALLY MCCRAY, husband and wife; SCOTT )  
KASEBURG and KATHRYN KASEBURG, )  
husband and wife; CAR LOT LLC, a Washington )  
limited liability company; FLOOR CRAFT )  
BUILDING LLC, a Washington limited liability )  
company; FREY REED BUILDING LLC, a )  
Washington limited liability company; and )  
WOODINVILLE LANDING LLC, a Washington )  
limited liability company, for themselves and a )  
Class of Similarly Situated Plaintiffs, )

Plaintiffs, )

vs. )

PORT OF SEATTLE, a municipal corporation; )  
PUGET SOUND ENERGY, INC., a Washington )  
for profit corporation, KING COUNTY, a political )  
subdivision of the State of Washington; )  
CENTRAL PUGET SOUND REGIONAL )  
TRANSIT AUTHORITY, a municipal )  
corporation; and CASCADE WATER )  
ALLIANCE, a municipal corporation, )

Defendants. )

No. 15-cv-00358 JCC

DEFENDANTS KING COUNTY,  
PORT OF SEATTLE AND SOUND  
TRANSIT'S JOINT MOTION FOR  
DISMISSAL OF TORT CLAIMS

NOTE ON MOTION CALENDAR:

May 1, 2015

DEFENDANTS KING COUNTY, PORT OF  
SEATTLE AND SOUND TRANSIT'S JOINT  
MOTION FOR DISMISSAL OF TORT CLAIMS  
(15-cv-00358 JCC) - 1

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1 **I. RELIEF REQUESTED**

2 Defendants King County, Port of Seattle, and the Central Puget Sound Regional Transit  
3 Authority (“Sound Transit”) jointly move to dismiss plaintiffs’ tort causes of action for violation  
4 of the government tort claims statute, RCW 4.96.020. Plaintiffs’ lawsuit is barred until each  
5 claimant has filed a proper claim with each municipal entity in compliance with the provisions of  
6 RCW 4.96.020.

7 **II. STATEMENT OF FACTS**

8 Plaintiffs assert the following tort causes of action against King County, the Port and  
9 Sound Transit:

- 10 • “Conspiracy to illegally utilize the trails act to defraud plaintiffs of their property
- 11 rights”
- 12 • Trespass
- 13 • Slander of Title

14 In addition, plaintiffs assert a claim for unjust enrichment, arising in tort, against the Port.

15 Plaintiffs have failed to file any tort claims associated with the causes of action asserted  
16 in this action with the municipal defendants prior to initiating this action. There is no allegation  
17 in the complaint, in accord with customary practice, that plaintiffs have satisfied the provisions  
18 of RCW 4.96.020 with each municipal defendant.

19 **King County.** By ordinance, King County specifies that a claim under RCW 4.96.020 be  
20 filed with the Clerk of the King County Council. KCC 4.12.070 (B). The person who holds this  
21 position is Anne Norris. In her declaration, Ms. Norris confirms that none of the plaintiffs have  
22 filed any claim form.

1        **Port of Seattle.** In accordance with statute, the Port of Seattle specifies that a claim  
 2 under RCW 4.96.020 must be filed with one of three authorized agents for the Port to receive the  
 3 notice – Jeff Hollingsworth, Sara Kern, or Vianney Muse. The Port of Seattle has recorded  
 4 notice with the King County Auditor identifying its agents and the address where they may be  
 5 reached during normal business hours. In their declarations, Mr. Hollingsworth, Ms. Kern, and  
 6 Ms. Muse confirm that none of the plaintiffs have filed any claim form. *See* Declaration of Jeff  
 7 Hollingsworth, ¶ 6; Declaration of Sara Kern ¶ 5; Declaration of Vianney Muse, ¶ 5.

8        **Sound Transit.** By resolution of the Sound Transit Board of Directors, a claim under  
 9 RCW 4.96.020 must be filed with the Board Administrator, who is designated to receive service  
 10 of process on behalf of Sound Transit. *See* Declaration of Kathryn Flores, ¶ 4. The person  
 11 currently filling this role is Kathryn Flores. *Id.* at ¶ 2. In her declaration, Ms. Flores confirms  
 12 that none of the plaintiffs have filed the required notice of claim. *Id.* at ¶¶ 5-7.

### 13    **III. STATEMENT OF ISSUE**

14        Should the Court dismiss plaintiffs' claims for damages arising out of tortious conduct  
 15 when they have failed to submit proper tort claim forms in accord with RCW 4.96.020 with each  
 16 municipal defendant? Yes.

### 17    **IV. EVIDENCE RELIED UPON**

18        Declaration of Anne Norris

19        Declaration of Jeff Hollingsworth

20        Declaration of Sara Kern

21        Declaration of Vianney Muse

22        Declaration of Kathryn Flores

**V. PLAINTIFFS' LAWSUIT MUST BE DISMISSED BECAUSE IT WAS FILED IN VIOLATION OF THE GOVERNMENT TORT CLAIMS STATUTE**

Under the government tort claims statute, RCW 4.96.020(4), any plaintiff seeking "damages against . . . local governmental entities" must comply with the requirements of RCW 4.96.020. In order to encourage settlement of claims against the government, a claimant is required to present the claim to a local government prior to filing suit. RCW 4.96.020(2). King County, the Port, and Sound Transit are each "local governmental entities within the meaning of this statute. *See* RCW 4.96.010(2)(definition of local governmental entity includes municipal corporations); RCW 39.50.010(3)(municipal corporations includes any county, port district and regional transit authority).

The statute bars a plaintiff from filing a court action against a local governmental entity until at least sixty days have elapsed after filing the claim:

*(4) No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.*

RCW 4.96.020 (emphasis added). "It is generally accepted that one of the purposes of the claim filing provisions is to allow government entities time to investigate, evaluate, and settle claims." *Medina v. Pub. Util. Dist. No. 1 of Benton Cnty.*, 147 Wn.2d 303, 310, 53 P.3d 993, 997 (2002).

Although the statute is liberally construed to allow substantial compliance "with respect to the content of claims . . . and all procedural requirements," RCW 4.96.020(5), both the need to

1 file a claim and the sixty day waiting period are strictly enforced. A time limitations is "either  
 2 complied with or it is not." *City of Seattle v. Pub. Employment Relations Comm'n*, 116 Wn.2d  
 3 923, 928-29, 809 P.2d 1377, 1380 (1991). As found in *Medina* and many other Washington  
 4 cases, "[n]oncompliance with the statute is not substantial compliance." *Corona v. Boeing Co.*,  
 5 111 Wn. App. 1, 8, 46 P.3d 253, 257 (2002). *See also Troxell v. Rainier Pub. Sch. Dist. No. 307*,  
 6 154 Wn.2d 345, 350-51, 111 P.3d 1173, 1175 (2005) (RCW 4.96.020(4) "forbids the  
 7 commencement of a tort action 'until sixty days have elapsed after' the filing of the notice of  
 8 claim with the 'local governmental entity.'").

9 Plaintiffs' causes of action against King County, the Port, and Sound Transit are claims in  
 10 which plaintiffs seek "damages arising out of tortious conduct." Plaintiffs base their first cause  
 11 of action – conspiracy to defraud – on alleged wrongs the municipal defendants committed,  
 12 which is a tort. "Where a conspiracy results in the commission of a wrong, the cause of action  
 13 sounds in tort and not in contract, though the acts constituting the wrong may affect contractual  
 14 relationships." *Kietz v. Gold Point Mines*, 5 Wn.2d 224, 233, 105 P.2d 71 (1940).

15 Plaintiff's trespass claim also sounds in tort. In accord with the Restatement (Second) of  
 16 Torts § 158, Washington recognizes Trespass as an intentional tort. *E.g. Bradley v. American*  
 17 *Smelting and Refining Co.*, 104 Wash.2d 677, 681, 709 P.2d 782 (1985); *Broughton Lumber Co.*  
 18 *v. BNSF Ry. Co.*, 174 Wn. 2d 619, 630, 278 P.3d 173 (2012).

19 Plaintiffs' slander of title claim also is a tort. *See Rorvig v. Douglas*, 123 Wn. 2d 854,  
 20 862-63, 873 P.2d 492 (1994) (adopting the Restatement of Torts definition of slander of title  
 21 thereby making attorneys' fees available as damages: "the Restatement (Second) of Torts . . .  
 22  
 23

describes slander of title as a form of the general tort of publication of an injurious falsehood” citing Restatement (Second) of Torts § 633 comment b (1977)).

In deciding whether plaintiffs’ fifth cause of action for unjust enrichment (raised solely against the Port) arises in tort, the court focuses on the “gravamen” of the claim. *See, e.g., Robinson v. Colorado State Lottery Div.*, 179 P.3d 998, 1008 (Colo. 2008) (because “claim is predicated on tortious conduct and the nature of the injury arises out of a misrepresentation, this claim lies in tort”); *Westwood Pharm., Inc. v. Nat’l Fuel Gas Distrib. Corp.*, 737 F. Supp. 1272, 1285 (W.D.N.Y. 1990) (“the gravamen of that claim centers on National Fuel’s alleged intentional and/or negligent acts [and] thus sounds in tort”); *Blusal Meats, Inc. v. United States*, 638 F. Supp. 824, 832 (S.D.N.Y. 1986) (because “the factual basis for the government’s [unjust enrichment] claims is that defendant knowingly and purposefully presented false documents to obtain money” they sound in tort).

The gravamen of plaintiffs’ unjust enrichment claim is that the Port never acquired a fee ownership of any kind in plaintiffs’ property and as a result, “granted illegal easement rights” to others. *See* Compl. at 23. Thus, they allege the Port “realized a monetary benefit for the utilization of . . . Plaintiffs’ property without payment to the Plaintiffs.” *See* Compl. at 23. As alleged, the claim for unjust enrichment is akin to a claim of conversion of plaintiffs’ property and tortious in nature.

Although plaintiffs’ claims against the County, the Port, and Sound Transit seek damages arising out of tortious conduct, none of the plaintiffs filed a tort claim with any of the municipal defendants prior to initiating this lawsuit. As a result, the Court should dismiss plaintiff’s tort causes of action. *See, e.g., Cronk v. City of West Richland*, 2015 WL 853863, at \*4 (Feb. 26,

1 E.D.Wash. 2015) (tort causes of action dismissed due to failure to file claim under RCW  
2 4.96.020); *White v. Shaffer*, 2014 WL 1116735, at \*2 (Mar. 20, W.D.Wash. 2014) (same);  
3 *Holland v. King County Adult Detention*, 2013 WL 5652505, at \*7 (Oct. 15, W.D.Wash. 2013)  
4 (same).

5 **VI. CONCLUSION**

6 For the foregoing reasons, the court should grant this motion to dismiss, the effect of  
7 which would be to dismiss plaintiffs' claims of conspiracy to defraud, trespass, slander of title,  
8 and for unjust enrichment.

9 DATED this 7<sup>th</sup> day of April, 2015.

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**DECLARATION OF FILING AND SERVICE**

I hereby certify that on April 7, 2015, I electronically filed the foregoing motion, the Declaration of Anne Noris, the Declaration of Jeff Hollingsworth, the Declaration of Sara Kern, the Declaration of Vianney Muse, and the Declaration of Katheryn Flores in Support of Defendants' Motion to Dismiss with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 7<sup>th</sup> day of April, 2015 at Seattle, Washington.

s/ Lebryna Tamaela  
Lebryna Tamaela, Paralegal  
King County Prosecuting Attorney's Office